

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

MATTHEW MCAFEE, on behalf of)
himself and all others similarly situated,) Case No. 1:24-cv-1168
))
Plaintiff,) Removed from:
) Hamilton County Superior 3
v.) Cause No. 29D03-2406-CT-006326
))
DRAFTKINGS, INC.)
))
Defendant.)

NOTICE OF REMOVAL

Defendant, DraftKings, Inc. (hereafter “DraftKings” or “Defendant”), by counsel, hereby gives notice that this action, *Matthew McAfee, et al. v. DraftKings, Inc.*, Cause No. 29D03-2406-CT-006326, is hereby removed to this Court from the Hamilton County Superior Court to the United States District Court for the Southern District of Indiana, pursuant to 28 U.S.C. §§ 1332(a), 1441, and 1446, and Local Rules 81-1, 81-2. This Court has jurisdiction over this action based upon diversity. *See* 28 U.S.C. § 1332(a). In support of its Notice of Removal, DraftKings states the following:

NATURE OF THE CASE

1. On June 10, 2024, Plaintiff Matthew McAfee filed this action in the Hamilton County Superior Court of Indiana.

2. Plaintiff alleges that he is a “natural person residing in Indianapolis, Indiana,” and that he has filed this action “on behalf of himself and all others similarly situated in the State of Indiana who had winning bets placed and accepted on the October 24, 2023, Lakers versus Nuggets basketball game that were

subsequently canceled by DraftKings for purported obvious error.” (Compl. ¶¶ 1–2.)

3. Plaintiff alleges that DraftKings is a for-profit corporation with its “principal place of business in Boston, Massachusetts.” *Id.* at ¶ 3. DraftKings is incorporated in the State of Nevada.

4. Plaintiff alleges that DraftKings improperly cancelled the Lakers-versus-Nuggets parlay bet that allegedly would have paid him \$150,000 had the bet been paid out. (Compl. ¶¶ 4–15.)

5. As a result, Plaintiff asserts claims against DraftKings for alleged violations of the Indiana Deceptive Consumer Sales Act and breach of contract.

6. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b)(1), which states that the notice of removal “shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.” Plaintiff served DraftKings by mail on June 14, 2024.

7. Because there is complete diversity of citizenship between the parties¹ and the amount in controversy exceeds \$75,000 (exclusive of interest and costs), this case is removable. *See* 28 U.S.C. § 1332(a).

VENUE

8. Removal to this District is proper because this Court embraces Hamilton County, Indiana. 28 U.S.C. § 94(b).

¹ In determining subject matter jurisdiction over a proposed class action, “only the citizenship of the named plaintiffs matters for diversity purposes.” *F. & H.R. Farman-Farmaian Consulting Eng’rs Firm v. Harza Eng’g Co.*, 882 F.2d 281, 284 (7th Cir. 1989) (citing *Snyder v. Harris*, 394 U.S. 332, 340 (1969)).

JURISDICTION

9. In support of removal, Defendant provides the following “short and plain statement of the grounds for removal” pursuant to 28 U.S.C. § 1446(a).

10. Plaintiff is a citizen of Indiana. (*See* Compl. ¶¶ 1–2.)

11. For purposes of diversity jurisdiction, Defendant is a citizen of Nevada because it is incorporated there, and a citizen of Massachusetts because it maintains its principal place of business in Massachusetts. (*See* Compl. at ¶ 3.).

12. Based upon the allegations in the Complaint, the amount in controversy exceeds \$75,000, exclusive of interest and costs. (*See* Compl. ¶¶ 4–15.)

13. Because there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000, this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) and this action may be removed pursuant to 28 U.S.C. § 1441 *et seq.*

REMOVAL PROCEDURES

14. DraftKings timely files this Notice of Removal within thirty days of receiving the Complaint on June 14, 2024. 28 U.S.C. § 1446(b).

15. DraftKings attaches a copy of “all process, pleadings, orders, and other documents” currently on file in the state court as **Exhibit 1** hereto. *Id.* at § 1446(a). The attachments in the State Court Record, in chronological order, are as follows:

- a. Appearance of Attorney Robert E. Duff for Plaintiff;
- b. Class Action Complaint (also attached separately as **Exhibit 2** per Local Rule 81-2(d));
- c. Summons to Defendant;

- d. Appearance of Attorneys Philip Zimmerly and Dakota C. Slaughter for Defendant;
- e. Defendant's Unopposed Motion for Extension of Time;
- f. Order Granting Motion for Enlargement of Time; and
- g. A copy of the state court docket sheet as of this filing date.

16. Pursuant to Local Rule 81-2, DraftKings verifies that the attached state court record is complete as of the date of removal.

17. DraftKings will promptly give written notice to all adverse parties and the clerk of the Court of Hamilton County. *Id.* § 1446(d).

18. By filing this Notice of Removal, Defendant does not waive, and expressly reserves, any defenses that may be available to it, including but not limited to any defenses related to insufficient service of process, lack of personal jurisdiction, and defenses available under Rule 12 of the Federal Rules of Civil Procedure.

CONCLUSION

For the foregoing reasons, Defendant, DraftKings, Inc., by counsel, hereby removes this action, *Matthew McAfee, et al. v. DraftKings, Inc.*, Cause No. 29D03-2406-CT-006326 (Hamilton County, Indiana), to this Court pursuant to 28 U.S.C. § 1332(a).

Respectfully submitted,

/s/ Philip R. Zimmerly

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CERTIFICATE OF SERVICE

I certify that on July 11, 2024, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all attorneys of record, and further certify that I also served all counsel of record via email.

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Counsel for Plaintiff

/s/ Philip R. Zimmerly

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